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10/589,773	08/17/2006	Michael Mueller	C 2818 PCT/US 1	3875
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**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>
	10/589,773	MUELLER ET AL.
	<b>Examiner</b>	<b>Art Unit</b>
	MEI-PING CHUI	1616

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

1) Responsive to communication(s) filed on 01 February 2009.

2a) This action is **FINAL**.                    2b) This action is non-final.

3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

4) Claim(s) 1-8 is/are pending in the application.

4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.

5) Claim(s) \_\_\_\_\_ is/are allowed.

6) Claim(s) 1-8 is/are rejected.

7) Claim(s) \_\_\_\_\_ is/are objected to.

8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

9) The specification is objected to by the Examiner.

10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a) All    b) Some \* c) None of:

1. Certified copies of the priority documents have been received.
2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

1) Notice of References Cited (PTO-892)

2) Notice of Draftsperson's Patent Drawing Review (PTO-948)

3) Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date n/a.

4) Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.

5) Notice of Informal Patent Application

6) Other: \_\_\_\_\_.

## **DETAILED ACTION**

### ***Status of Action***

Receipt of Amendments/Remarks filed on 02/01/2009 is acknowledged. Claims 1-8 are originally presented in this application.

### ***Status of Claims***

Accordingly, claims **1-8** are presented for examination on the merits for patentability.

Rejections and/or objections not reiterated from the previous Office Action is/are hereby withdrawn. The following rejections and/or objections are either reiterated or newly applied. They constitute the complete set of rejections and/or objections presently being applied to the instant application.

## ***DOUBLE PATENTING***

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the “right to exclude” granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g.,

*In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29

USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

**Claims 1-5 and 8 are provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-6 of co-pending U.S. Patent Application No. 10/589,772 in view of Simonnet et al. (U. S. Patent No. 6,689,371).**

Instant claims 1-5 and 8 are directed to an emulsion comprising (i) at least one alkyl and/or alkenyl oligoglycoside carboxylic acid salt of formula (I):  $R^1O[G]_pO[(CH_2)_mCOO^-X^+]_n$ , (ii) an oil component and (iii) a mono and/or polyhydric alcohols containing 1 to 4 carbon atoms, wherein the emulsion has a mean particle diameter from **5 to 20 nm**, and (iv) which can further contain a surfactant. In addition, the instant emulsion is incorporated in an article, i.e. wet wipe, or a cosmetic formulation.

Conflicting claims 1-6 of co-pending U.S. Patent Application No. 10/589,772 are directed to an emulsion comprising (i) at least one alkyl and/or alkenyl oligoglycoside carboxylic acid salt of formula (I):  $R^1O[G]_pO[(CH_2)_mCOO^-X^+]_n$ , (ii) an oil component and (iii) a mono and/or polyhydric alcohols containing 1 to 4 carbon atoms, wherein the emulsion has a mean particle diameter from 20 to 250 nm, and (iv) which can further contain a surfactant. In addition, the instant emulsion is incorporated in an article, i.e. wet wipe, or a cosmetic formulation.

Instant claims and conflicting claims differ in that the instant emulsion has a mean particle diameter from **5 to 20 nm**, where the conflicting emulsion has a mean particle diameter from **20 to 250 nm**.

The prior art Simonnet et al. teach an emulsion comprising oils and surfactants (column 2, lines 23-31). Simonnet et al. teach that the oily globules of the emulsion have a number-average size of less than 100 nm, in which the small size globules are transparent and exhibit a novel texture. The small size of globules can also carry active agents more efficiently and can produce a stable emulsion on storage with the ability to retain good transparency and good cosmetic properties (column 1, lines 20-36). Simonnet et al. also teach that the decrease in the size of the globules makes it possible to promote the penetration of the active principles into surface layers, i.e. skin (column 3, lines 3-6). Simonnet et al. further teach that the surfactant, which is composed of an ester of a fatty acid and fructose or glucose sugar residue, is present in an amount of 0.2 % to 15 % by weight, and the oil phase is present in an amount of 2 % to 40 % by weight. In addition, the emulsion can include additional additive(s) for improving the transparency of the formulation, i.e. ethanol, glycerol, propylene glycerol, which is present in an amount of 5 % to 20 % by weight (column 4, lines 42-51 and column 6, lines 38-63).

It would have been obvious to a person of ordinary skilled in the art at the time the invention was made to combine the claims 1-6 of co-pending U.S. Patent Application No. 10/589,772 with the teaching of Simonnet et al. (U. S. Patent No. 6,689,371) to arrive at the instant invention.

One of ordinary skill also would have been motivated to choose the particle size of the emulsion, as claimed in the co-pending Application No. 10/589,772, and further reducing the particle to the desirable size range and reasonably expects a successful result because decreasing the size of the globules provides a better penetration property than the larger size particle, as taught by Simonnet et al.

Therefore, one of ordinary skill in the art, at the time the claimed invention was made, would have readily recognized that claims 1-6 of co-pending U.S. Patent Application No. 10/589,772 and claims 1-5 and 8 in the instant application are obvious variant and are not patentability distinct to each other.

**The previous provisional rejection with respect to instant claims 1-5 and 8, on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-6 of co-pending U.S. Patent Application No. 10/589,772 in view of Simonnet et al. (U. S. Patent No. 6,689,371), is maintained.**

*Response to Arguments*

Applicants argue that the provisional double patenting rejection over co-pending U. S. Patent Application No. 10/589,772 is premature because the conflicting claims 1-6 in the co-

pending application have not been allowed. Therefore, the filing of a disclaimer at this time is not required (see Remarks: page 2-3).

Applicants' arguments filed on 02/01/2009 have been fully considered but they are not persuasive. The "provisional" double patenting rejection should continue to be made by the examiner in each application as long as there are conflicting claims in more than one application unless that "provisional" double patenting rejection is the only rejection remaining in one of the applications." See MPEP 822.01. Since the double patenting rejection is not the only rejection in the instant application; therefore, the double patenting rejection is maintained.

#### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

**(1) Claims 1-3 and 8 are rejected under 35 U.S.C. 103(a) as being unpatentable over Milstein et al. (WO 99/24538) in view of Simonnet et al. (U. S. Patent No. 6,689,371 or its equivalent European Patent Application No. 1010413 published on 06/21/2000).**

*Applicant claims*

Applicants claim an emulsion, which has a mean particle diameter of **5 to 20 nm**, comprising: (a) 5-50 % by weight of at least one alkyl oligoglycoside carboxylic acid salt of the formula (I):  $R^1O[G]_pO[(CH_2)_mCOO^-X^+]_n$ , wherein  $R^1$  = an alkyl group containing 4 to 22 carbon atoms;  $G$  = a sugar unit containing 5 or 6 carbon atoms;  $p$  = 1-10;  $m$  = 1-5;  $n$  = 1-5;  $X$  = an alkali metal; (ii) an oil component (5-50 % by weight) and (iii) a mono and/or polyhydric alcohols containing 1 to 4 carbon atoms, i.e. ethanol, glycerol, ethylene glycol or propylene glycol (0-15 % by weight), and the emulsion further comprises a surfactant, i.e. an anionic, a non-ionic, an amphoteric or a zwitterionic type. In addition, Applicants also claim that the emulsion is incorporated in a cosmetic formulation.

*Determination of the scope and content of the prior art  
(MPEP 2141.01)*

Milstein et al. teach a composition comprising an alkyl polyglycoside ether carboxylate surfactant and auxiliary additives that can be formulated into cosmetic formulation for employing in personal care products (page 10: lines 20-24). Milstein et al. also teach it is known in the relevant art that it is advantageous to use mixtures of surfactants in cleaning compositions when the surfactants can serve different functions, i.e. one serving to improve foamability and another serving to adjust viscosity (page 1: lines 16-18). For example, alkyl polyglycosides are

used as non-ionic surfactants with excellent detergent properties and high ecotoxicological compatibility (page 2: lines 5-7).

While most of the existing applications or products use the mixture of anionic and non-ionic surfactants, it would be more desirable and significantly less costly to employ a single compound which would exhibit the favorable properties of an anionic and non-ionic surfactants simultaneously (page 2: lines 13-17).

Milstein et al. teach that the personal care composition comprising an alkyl polyglycoside ether carboxylate surfactant of the formula (I):  $\mathbf{R}^1\mathbf{O}(\mathbf{R}^2\mathbf{O})_{\mathbf{b}}(\mathbf{Z})_{\mathbf{a}}\mathbf{OCH}_2\mathbf{COO}^-\mathbf{X}^+$ , wherein the substituents:  $\mathbf{R}^1$  = an alkyl group containing 6-30 carbon atoms;  $\mathbf{Z}$  = a sugar residue having 5 or 6 carbon atoms;  $\mathbf{a} = 1-6$ ;  $\mathbf{b} = 0$ , and  $\mathbf{X}$  = an alkali metal ion, in which the preferred alkyl polyglycoside ether carboxylate surfactant of the formula is  $\mathbf{R}^1\mathbf{O}(\mathbf{Z})_{\mathbf{a}}\mathbf{OCH}_2\mathbf{COO}^-\mathbf{X}^+$  (page 3, lines 1-4; page 4: lines 1-6 and page 7: lines 4-11).

Milstein et al. teach that the alkyl polyglycoside ether carboxylate is present in an amount from 0.1 % to 50 % by weight, based on the weight of the personal care composition (page 11: lines 1-4).

Milstein et al. also teach that the composition can comprise additional auxiliaries and additives, i.e. oily substances and emulsifiers, (page 11, lines 1-3, 12 and 18), wherein the emulsifiers can be non-ionic surfactants, zwitterionic surfactants or ampholytic surfactants (page 11: lines 5-7; page 12, line 11; page 14, line 16 and page 15, lines 4-5). In addition, Milstein et al. teach that to improve the flow behavior, the composition can include a hydrotrope, i.e. ethanol or polyol, wherein the polyol can be glycerol, ethylene glycol or propylene glycol (page 20, line 23 and page 21, lines 1-6).

Milstein et al. further teach that the amount of auxiliaries and additives range from about 1 % to about 50 % by weight, based on the weight of the personal care composition (page 22, lines 17-19).

*Ascertainment of the difference between the prior art and the claims*  
**(MPEP 2141.02)**

Milstein et al. teach a composition comprising an alkyl polyglycoside ether carboxylate and other additives; however, Milstein et al. do not teach a specific amount of the additive, i.e. the oil substance and the polyhydric alcohol, present in the composition. Milstein et al. also do not teach a specific mean particle size of the composition. However, the deficiencies are cured by the teaching of Simonnet et al.

Simonnet et al. teach an emulsion comprising oils and surfactants (column 2, lines 23-31). More specifically, Simonnet et al. teach that the oily globules of the emulsion have a number-average size of less than 100 nm, in which the small size globules are transparent and exhibit a novel texture. The small size of globules can also carry active agents more efficiently and can produce a stable emulsion on storage with the ability to retain good transparency and good cosmetic properties (column 1, lines 20-36). Simonnet et al. also teach that the decrease in the size of the globules makes it possible to promote the penetration of the active principles into surface layers of the skin (column 3, lines 3-6).

Simonnet et al. also teach that the surfactant, which is composed of an ester of a fatty acid and fructose or glucose sugar residue, is present in an amount of 0.2 % to 15 % by weight, and the oil phase is present in an amount of 2 % to 40 % by weight. In addition, the nanoemulsion can include additional additive(s) for improving the transparency of the

formulation, i.e. ethanol, glycerol, propylene glycerol, which is present in an amount of 5 % to 20 % by weight (column 4, lines 42-51 and column 6, lines 38-63).

***Finding of prima facie obviousness Rational and Motivation***  
***(MPEP 2142-2143)***

It would have been obvious to a person of ordinary skilled in the art at the time the invention was made to combine the teachings of Milstein et al. and Simonnet et al. to arrive at the instantly claimed invention.

One of ordinary skill would have been motivated to choose a suitable quantity of oil component and additive, i.e. polyhydric alcohol, and adjusts their amounts within a desirable concentration range because the amount of said oil component and alcohol present in the composition is merely a judicious selection and routine optimization, which would dependent on the other components present in the composition, as taught by Milstein et al. and Simonnet et al.

One of ordinary skill also would have been motivated to select a suitable mean particle size, i.e. a larger in particle diameter, and decreases the particle to the desirable smaller size range, dependent on the effects of the desirable products to be made, as taught by Simonnet et al.

From the teaching of the references, one of ordinary skill in the art would have had a reasonable expectation of success in producing the claimed invention. Therefore, the invention as a whole would have been *prima facie* obvious to one of ordinary skill in the art at the time the invention was made, as evidenced by the references, especially in the absence of evidence to the contrary.

**The previous rejection with respect to claims 1-3 and 8 under 35 U.S.C. 103(a), as being unpatentable over Milstein et al. (WO 99/24538) in view of Simonnet et al. (U. S. Patent No. 6,689,371 or its equivalent European Patent Application No. 1010413 published on 06/21/2000), is maintained.**

*Response to Arguments*

Applicants' arguments filed on 02/01/2009 have been fully considered but they are not persuasive.

Applicants argue that there is no disclosure or suggestion in **Milstein et al.** of microemulsion, which have a specific mean particle size 5-20 nm as required by the present claims. Not only does Milstein fail to teach or suggest these two important claim requirements, it fails to disclose a specific amount of the oil component. Furthermore, even the examples of Milstein (pages 24-29) show formulations with oil contents much less than the 5 % minimum required by the claims now pending. Indeed one advantage of applicants' microemulsion is the ability to incorporate relatively large amounts of oil components (see Remarks: page 3).

Applicants also argue that **Simonnet et al.** do disclose nanoemulsion, not microemulsion. Furthermore, Simonnet et al. disclose a nanoemulsion comprising sugar fatty acid esters and/or ethers. Simonnet et al. do not disclose the alkyl/alkenyl oligoglycoside carboxylate salts as required by the present claims. Applicants' sugar surfactants are anionic surfactants, whereas those of Simonnet et al. are nonionic, having a different charge state. It is not obvious that one skilled in the art at the time of the invention could even produce nanoemulsions from anionic surfactants based on the disclosure of Simonnet using the components of Milstein. Thus, the

citation of Simonnet fails to overcome the substantial deficiencies of Millstein (see Remarks: page 4).

In response to applicants' arguments against the references individually, one cannot show nonobviousness by arguing references individually where the rejections are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986). In the instant case, the combined references, namely **Milstein et al. and Simonnet et al.**, teach the use of an alkyl polyglycoside ether carboxylate surfactant, i.e. the formula of  $R^1O(Z)_aOCH_2COO^{\cdot}X^+$ , in combination with oily substances (present in an amount from 2-40 %) and surfactants to obtain good cosmetic properties, i.e. improved foamability and composition's viscosity, enhanced penetration of the active agents into surface layers of the skin, as well as good transparency, for the emulsion. It is noted that Simonnet et al. teach the emulsion has an average particle size of less than 100 nm, where the claimed microemulsion has a mean particle size of 5 to 20 nm, which the 5-20 nm falls within the range of less than 100 nm as taught by Simonnet et al. Therefore, the combined teaching of Milstein et al. with Simonnet et al. would have been obvious to a person of ordinary skilled in the art at the time the invention was made.

With respect to the argument in that the prior art, namely Simonnet et al., disclose the use of sugar fatty acid esters and/or ethers as **non-ionic** surfactants, whereas Applicants' sugar surfactants are **anionic** surfactants, it is not persuasive because instant claim 2 recites the additional surfactant can be either an anionic, a cationic, a non-ionic, an amphoteric or a zwitterionic type surfactant. Therefore, it would have been obvious to one of ordinary skill to

select a suitable type of surfactants, dependent on the desirable product or desirable result the manufacturer wishes to attain.

**(2) Claims 4-7 are rejected under 35 U.S.C. 103(a) as being unpatentable over Milstein et al. (WO 99/24538) in view of Simonnet et al. (U. S. Patent No. 6,689,371), and further in view of Weuthen et al. (U. S. Patent Application Publication No. 2003/0124373).**

*Applicant claims*

Applicants claim an emulsion, which has a mean particle diameter of 5 to 20 nm, comprising: (a) 5-50 % by weight of at least one alkyl oligoglycoside carboxylic acid salt of the formula (I):  $R^1O[G]_pO[(CH_2)_mCOO^-X^+)_n]$ , wherein  $R^1$  = an alkyl group containing 4 to 22 carbon atoms;  $G$  = a sugar unit containing 5 or 6 carbon atoms;  $p$  = 1-10;  $m$  = 1-5;  $n$  = 1-5;  $X$  = an alkali metal; (b) an oil component (5-50 % by weight) and (c) a mono and/or polyhydric alcohols containing 1 to 4 carbon atoms, wherein the emulsion is diluted before impregnating into an article, i.e. wet wipe.

*Determination of the scope and content of the prior art*  
**(MPEP 2141.01)**

The combined teachings of Milstein et al. and Simonnet et al. have been set forth above. Essentially, Milstein et al. teach a composition comprising an alkyl polyglycoside ether carboxylate surfactant and auxiliary additives, i.e. oil substances, mono-alcohol or polyhydric alcohols, in which the composition can be employed in a product.

Simonnet et al. teach the emulsion comprising oils and surfactants (column 2, lines 23-31). Simonnet et al. also teach that the oily globules of the emulsion have a number-average size of less than 100 nm, in which the small size globules are transparent and exhibit a novel texture. The nanoemulsion with such small size can carry active principle efficiently and is stable on storage (column 1, lines 20-36). Simonnet et al. also teach that the decrease in the size of the globules makes it possible to promote the penetration of the active principles into surfaces, i.e. the layers of the skin (column 3, lines 3-6).

*Ascertainment of the difference between the prior art and the claims*  
(MPEP 2141.02)

The combined teachings of Milstein et al. and Simonnet et al. neither teach an article, i.e. wet wipe, that impregnated with said emulsion nor that the emulsion is diluted before impregnating into the article. However, the deficiencies are cured by the teaching of Weuthen et al.

Weuthen et al. teach an application of wet wipes, which are impregnated with a concentrate mixture of surfactants, i.e. alkyl polyglycosides, and oily bodies, as well as auxiliaries and additives, for the technically simple and the cost-effective productions (page 1, [0001] and [0005], and page 1, [0008], [0018], [0027] and [0029]).

Weuthen et al. also teach that the concentrate has a rapid dilutability property, which can be further diluted before the production of wet wipe (page 1, [0005], lines 9-13).

*Finding of prima facie obviousness Rational and Motivation*  
(MPEP 2142-2143)

It would have been obvious to a person of ordinary skilled in the art at the time the invention was made to combine the teachings of Milstein et al. and Simonnet et al., and formulate a storage-stable, cost-effective composition having a very fine divided mean particle size, i.e. the size of less than 100 nm, and further combine the teaching of Weuthen et al., by impregnating said emulsion into an article, i.e. wet wipe, to arrive at the instant invention.

One of ordinary skill would have been motivated to do this because it is known in the art that an emulsion having very fine particle size can be formulated to retain the good properties, such as transparent, novel texture, storage-stable, good viscosity, and at the same, it is less costly to produce. Furthermore, the art, namely Weuthen et al., has already established the concept of impregnating an emulsion comprising a mixture of surfactants and auxiliary additives into a wet wipe, wherein the emulsion can be made into a concentrate form and will be diluted before use. Therefore, the Examiner can only conclude that it would be obvious to impregnate an emulsion that have a very fine particle size into a desired product. The product, i.e. wet wipe, is merely a judicious selection, which would be dependent on the desirable marketing products to be made.

From the teaching of the reference, it would have been obvious that one of ordinary skill in the art would have had a reasonable expectation of success in producing the claimed invention. Therefore, the invention as a whole would have been *prima facie* obvious to one of ordinary skill in the art at the time the invention was made, as evidenced by the references, especially in the absence of evidence to the contrary.

**The previous rejection with respect to claims 4-7 under 35 U.S.C. 103(a), as being unpatentable over Milstein et al. (WO 99/24538) in view of Simonnet et al. (U. S. Patent No.**

**6,689,371), and further in view of Weuthen et al. (U. S. Patent Application Publication No. 2003/0124373), is maintained.**

***Response to Arguments***

Applicants' arguments filed on 02/01/2009 have been fully considered but they are not persuasive.

Applicants argue that Weuthen et al. disclose a moist wipe impregnated with linear and/or branched alcohol polyglycol ethers which must contain at least one mole of propylene oxide, preferably in combination with alkyl oligoglucoside, but Weuthen et al. do not disclose the alkyl/alkenyl oligoglycoside carboxylate salts of applicants. In addition, Weuthen et al. require specific alcohol polyglycol ethers for the wet wipes of his invention, in contrast to applicants' care articles/wipes (instant claims 4 and 5). Also, Weuthen et al. do not disclose **nanoemulsions**. Thus the deficiencies of Milstein et al. and Simonnet et al. are not cured by adding Weuthen et al. (see Remarks: page 3-4).

The arguments are not persuasive because the combined references, namely **Milstein et al. and Simonnet et al.**, teach the use of an alkyl polyglycoside ether carboxylate surfactant, i.e. the formula of  $\mathbf{R}^1\mathbf{O}(\mathbf{Z})_a\mathbf{OCH}_2\mathbf{COO}^-\mathbf{X}^+$ , in combination with oily substances (present in an amount from 2-40 %) and surfactants in the form of an emulsion (e.g. the average particle size of **less than 100 nm**) to obtain good cosmetic properties, i.e. improved foamability and composition's viscosity, enhanced penetration of the active agents into surface layers of the skin, as well as good transparency, for the emulsion. The goal of the prior art **Weuthen et al.** is to teach that it is known in the art wet wipes can be impregnated with a mixture containing

surfactants, i.e. alkyl polyglycosides, oils, auxiliaries and additives, for the production of cost-effective products.

With respect to the argument in that the prior art Weuthen et al. do not disclose nanoemulsion (see Remarks: page 4), it is not persuasive because instant claim 1 recites a microemulsion, not a nanoemulsion; therefore, whether Weuthen et al. disclose a nanoemulsion or not is irrelevant.

From the teaching of the references, one of ordinary skill in the art would have had a reasonable expectation of success in producing the claimed invention. Therefore, the invention as a whole would have been *prima facie* obvious to one of ordinary skill in the art at the time the invention was made, as evidenced by the references, **especially in the absence of evidence to the contrary.**

### ***Conclusion***

No claims are allowed.

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37

CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

***Contact Information***

Any inquiry concerning this communication from the Examiner should direct to Helen Mei-Ping Chui whose telephone number is 571-272-9078. The examiner can normally be reached on Monday-Thursday (7:30 am – 5:00 pm). If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor Johann Richter can be reached on 571-272-0646. The fax phone number for the organization where the application or proceeding is assigned is 571-273-8300.

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/H. C./

Examiner, Art Unit 1616

/Johann R. Richter/

Supervisory Patent Examiner, Art Unit 1616

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